

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202208135	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/25/2022 9:00 PM	Location of Incident: in front of 208 Dyckman Street	18 Mo. SOL 5/25/2024	Precinct: 34		
Date/Time CV Reported Tue, 11/29/2022 10:06 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/29/2022 10:06 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Andres Toribio	03138	945059	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Ankit Gupta	10523	974159	032 PCT
2. PO Jonathan Scheine	05667	964757	023 PCT
3. PO David Lee	09973	974266	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Andres Toribio	Abuse: Sergeant Andres Toribio arrested § 87(2)(b) unlawfully.	
B . SGT Andres Toribio	Abuse: Sergeant Andres Toribio searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On November 29, 2022, § 87(2)(b) filed this complaint with the CCRB over the phone.

On November 25, 2022, at approximately 9:00 PM, § 87(2)(b) parked his black 2019 Honda Accord in the bus stop located at 208 Dyckman Street in Manhattan. § 87(2)(b) entered the restaurant on the sidewalk behind the bus stop. Approximately three minutes later, Police Officer David Lee, Police Officer Ankit Gupta, and Sergeant Andres Toribio of the 34th Precinct approached § 87(2)(b) vehicle. § 87(2)(b) exited the restaurant, and the officers told him that his vehicle was reportedly stolen. SGT Toribio placed § 87(2)(b) in handcuffs and placed him inside a patrol vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). SGT Toribio and PO Gupta transported § 87(2)(b) and PO Lee drove his vehicle to the 34th Precinct station house. The officers lodged § 87(2)(b) in a holding cell. SGT Toribio instructed PO Lee and PO Sheine to conduct inventory search of § 87(2)(b) vehicle (**Allegation B: Abuse of Authority**, § 87(2)(g)). SGT Toribio and the officers investigated the vehicle and determined that it was not stolen. § 87(2)(g), § 87(4-b)

§ 87(2)(b) [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)]

The investigation received BWC video for this PO Lee, PO Gupta, and PO Sheine. The video footage is attached to IA #44 (BR10).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Andres Toribio arrested § 87(2)(b) unlawfully.

§ 87(2)(b) stated (BR1) that he entered the restaurant to order food and was inside the restaurant for approximately two to three minutes when he observed PO Lee, PO Gupta and SGT Toribio walk up to his vehicle on the street. § 87(2)(b) exited the restaurant to speak with the officers. SGT Toribio stood on the sidewalk while PO Lee and PO Gupta inspected § 87(2)(b) registration sticker on the front windshield. § 87(2)(b) told SGT Toribio that the vehicle belonged to him. SGT Toribio walked to PO Lee and PO Gupta and the officers spoke amongst themselves. SGT Toribio instructed § 87(2)(b) to put his hands behind his back. § 87(2)(b) complied, and SGT Toribio placed him in handcuffs. PO Lee told § 87(2)(b) he was under arrest because his vehicle was reportedly stolen. § 87(2)(b) asked PO Lee to check his license, registration, and insurance to confirm that the vehicle belonged to him. PO Lee refused and placed § 87(2)(b) inside a patrol vehicle. § 87(2)(b) heard SGT Toribio, PO Lee, and PO Gupta discuss that his Vehicle Identification Number (VIN) partly matched that of a stolen vehicle. PO Lee transported § 87(2)(b) vehicle and SGT Toribio and PO Gupta transported his person to the 34th Precinct station house. § 87(2)(b) was processed at the front desk and then lodged inside the holding cell.

PO Lee and PO Toribio's CCRB statements were somewhat similar.

PO Lee stated (BR3) that he and PO Gupta were on patrol and observed § 87(2)(b) parked vehicle in the bus stop located at the location. PO Lee and PO Gupta intended to issue § 87(2)(b) vehicle a summons. The officers ran § 87(2)(b) plate number on

their mobile NYPD database. The search yielded a partial VIN match for a stolen vehicle. There was a red triangle on the search results and a warning that read, "Caution, possibly stolen." PO Lee stated that the NYPD mobile database will automatically flag any vehicle which has a VIN with identical starting digits as the VIN of a stolen vehicle. PO Lee stated that § 87(2)(b) VIN matched the "first couple of digits" of a stolen vehicle. PO Lee stated that operating a stolen vehicle is an arrestable offense.

At this time, PO Lee requested for SGT Toribio to come to the location. When SGT Toribio arrived at the location, § 87(2)(b) approached the officers and asked what was wrong. SGT Toribio placed § 87(2)(b) in handcuffs and under arrest for possessing a stolen vehicle. § 87(2)(b) told the officers that the vehicle belonged to him and that he had the proper documentation to prove it. PO Lee did not know whether any officers looked at § 87(2)(b) driver's license or registration. PO Lee did not recall whether he or any other officers on scene inspected § 87(2)(b) documents to verify his ownership of the vehicle. During PO Lee's CCRB interview, he stated that the stolen vehicle's VIN was accessible from his mobile database. However, he did not review the VIN of the stolen vehicle and he did not compare it to the VIN number on § 87(2)(b) vehicle. PO Lee did not attempt to verify the ownership of the vehicle with § 87(2)(b) registration. PO Lee stated that he was not aware of this step when verifying a vehicle's ownership at the time of the incident. PO Lee stated that he learned of the proper procedure "months later" when he discussed the incident with an officer at his command with more tenure.

SGT Toribio stated (**BR4**) that he did not recall whether § 87(2)(b) told officers that he had documents that proved that his vehicle was not stolen. SGT Toribio stated that although officers had the ability to obtain the complete VIN of the stolen vehicle and compare it against § 87(2)(b) VIN, there were no attempts to do so at the location. SGT Toribio told § 87(2)(b) that he would remove him and his vehicle to the station house. SGT Toribio told § 87(2)(b) that he would not conduct business on the street with people walking around. During SGT Toribio's CCRB interview, he stated that he was not comfortable investigating in the field because PO Lee and PO Gupta were rookie officers and that there was a safety concern with passersby walking around. SGT Toribio and PO Gupta transported § 87(2)(b) and PO Lee transported his vehicle to the 34th Precinct station house. § 87(2)(b) was placed in a holding cell and the officers conducted their investigation. SGT Toribio and officers conducted a DAS-Lite and DMZ database search for § 87(2)(b) vehicle. The search confirmed that the vehicle was not stolen.

According to NYPD Warrant Audits, officers conducted a vehicle plate search for § 87(2)(b) vehicle, #§ 87(2)(b) five times. A search was conducted at 10:18 PM by PO Gupta, SGT Toribio conducted a search at 10:22 PM and again at 10:29 PM. PO Lee conducted a search at 10:32 PM and then PO Sheine conducted a search at 10:46 PM.

According to PO Lee's BWC video (**BR1**), at timestamp 1:20, PO Lee, PO Gupta, and SGT Toribio inspect the front § 87(2)(b) front windshield. At timestamp 1:53, § 87(2)(b) approaches the officers and asks them if there is something wrong with his vehicle. The officers instruct § 87(2)(b) to wait and stand on the sidewalk. At timestamp 2:10, § 87(2)(b) ask officers what is wrong with his vehicle again. PO Lee tells him to wait. At timestamp 2:39, SGT Toribio instructs PO Lee and PO Gupta to place § 87(2)(b) under arrest. At timestamp 2:45, SGT Toribio and PO Lee place § 87(2)(b) in handcuffs. At timestamp 3:23, PO Lee tells § 87(2)(b) that he is under arrest because his vehicle was reportedly stolen. § 87(2)(b) tells officers that the vehicle belonged to him and that he can present documents to prove it. PO Lee tells § 87(2)(b) that they can handle "all that

stuff” at the stationhouse. At timestamp 5:08, the officers escort § 87(2)(b) into a patrol vehicle.

At timestamp 6:40, § 87(2)(b) tells the officer to run his registration because the vehicle is under his name. SGT Toribio instructs officers to make sure the VIN is correct. At timestamp 7:19, PO Lee reads out loud, § 87(2)(b) PO Lee looks up § 87(2)(b) vehicle information in his mobile database. At timestamp 8:35, PO Lee shows SGT Toribio his database search that says § 87(2)(b) vehicle appears stolen. SGT Toribio and PO Lee compare § 87(2)(b) VIN and the VIN of the stolen vehicle yielded. SGT Toribio tells PO Lee that the numbers does not match. SGT Toribio tells PO Lee that they will take § 87(2)(b) and his vehicle to the station house and can later void the arrest if there is a mistake. At timestamp 12:03, PO Lee enters § 87(2)(b) vehicle and drives it to the station house. SGT Toribio and PO Gupta transport § 87(2)(b) person.

According to PO Gupta’s BWC video (**BR8**), at timestamp 33:39, officers escort § 87(2)(b) inside a holding cell.

According to PO Lee’s third BWC video (**BR7**), at timestamp 1:00, PO Gupta escorts § 87(2)(b) out of his holding cell.

The BWC video obtained showed that § 87(2)(b) was detained inside a holding cell for approximately forty-one minutes.

According to the New York State Penal Law 155.30 (8) (BR), a person is guilty of grand larceny in the fourth degree when he steals property and when the value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, other than a motorcycle.

According to NYPD Patrol Guide Procedure 207-11, when officers encounter a when a complaint of a stolen vehicle is received, officers are to:

1. Respond to scene and conduct preliminary investigation.
2. Ascertain through available Department resources: a. If vehicle has been impounded or repossessed b. If vehicle is wanted in connection with a crime c. If vehicle has been previously reported stolen d. Verification of Vehicle Identification Number (VIN) or ownership, if necessary, e. Expiration date of registration plates, when necessary. f. If vehicle was towed by rotation tow. g. If vehicle was relocated due to a special event by utilizing the Citywide Towing Operations System (CTOPS) application.

When officers observed § 87(2)(b) vehicle parked in a bus lane, PO Gupta and PO Lee were justified in running a search of the VIN in their mobile database. The alert they received, which indicated similarities between the VIN of § 87(2)(b) vehicle and that of a stolen vehicle, warranted further investigation. However, by SGT Toribio and PO Lee’s own admission, they did not compare § 87(2)(b) VIN and the VIN of the stolen vehicle, even though that information was readily available to them. They also refused to review the registration and insurance information offered by § 87(2)(b) The investigation does not credit SGT Toribio’s claim that there was a safety concern for officers to investigate on the street. Although there were passersbys and bystanders who observed the incident, none of them acted aggressively or in a hostile manner towards the officers and § 87(2)(b) was cooperative. The video evidence obtained showed that SGT Toribio removed § 87(2)(b) to the 34th Precinct station house and justified it by saying the arrest can be voided if there is an error. In accordance with the Patrol Guide, officers are to investigate a possibly stolen vehicle in the field, by verifying the VIN, which is distinct by each vehicle, to determine ownership. § 87(2)(g)

§ 87(2)(g)

Allegation (B): Sergeant Andres Toribio searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated (BR1) that at approximately 11:30 PM, PO Lee escorted him out of his holding cell. PO Sheine informed § 87(2)(b) the police confirmed that his vehicle was not stolen. Therefore, he would be released, and his arrest would be voided. PO Sheine told § 87(2)(b) that he searched his vehicle. PO Scheine handed § 87(2)(b) his registration. § 87(2)(b) stated that his registration was inside in the storage compartment in between the driver seat and the front passenger seat prior to the incident.

SGT Toribio stated (BR4) that he instructed PO Lee and PO Sheine to conduct an inventory search of his vehicle. SGT Toribio instructed officers to turn on their BWC while they conducted the search.

PO Lee stated (BR3) that after § 87(2)(b) was lodged inside a holding cell, he conducted an inventory search of § 87(2)(b) vehicle. PO Lee did not prepare vouchers for any items he found within. PO Lee stated that generally, items and valuables found inside a vehicle during an inventory search are documented. PO Lee stated that he did not generate vouchers for § 87(2)(b) vehicle and personal belongings, because he learned that § 87(2)(b) would be released and therefore the police did not need to detain any of his belongings.

According to PO Lee's second BWC video (BR6), at 1:28 PO Sheine searches the front passenger side of § 87(2)(b) vehicle. At timestamp 1:54, PO Lee says, "Remember we are inventorying the car." At timestamp 2:00, PO Lee says out loud that there are cell phones inside the vehicle. At timestamp 2:23, PO Lee walks to the front driver side and opens the door. At timestamp 2:29, PO Lee and the bald officer open each of the back passenger side doors. PO Lee looks inside with his flashlight. PO Lee says the vehicle is "allegedly stolen." At timestamp 2:56, PO Lee and PO Sheine open the trunk; PO Lee tells PO Sheine that he checked the trunk. The trunk is empty. At timestamp 3:16, PO Lee says out loud to himself, "I guess I get a voided arrest."

According to NYPD Patrol Guide Procedure 218-13 (BR12), officers must thoroughly search the interior of any vehicle that comes into police custody. Officers are permitted to search the interior of the vehicle thoroughly. All valuable items found inside the vehicle must be invoiced on a separate Property Clerk Invoice and property of little value that is left inside the vehicle should within reason be listed in the officer's activity log.

In People v. Johnson, 1 N.Y.3d 252 (2003) (BR11), the court ruled that the difference between inventory search and a general rummaging of a vehicle in order to discover incriminating evidence is the preparation of a meaningful inventory list of items within.

SGT Toribio was the only subject for this allegation because he stated that he instructed officers to conduct an inventory search of § 87(2)(b) vehicle.

The search of § 87(2)(b) vehicle began at approximately 11:02 PM, while the last database search for it was conducted at approximately 10:46 PM. At this time, the ownership of the vehicle had already been established § 87(2)(g)

§ 87(2)(b) The NYPD Patrol Guide states that officers are required to conduct a thorough inventory search of § 87(2)(b) vehicle once it was in police custody. The officers are then required to invoice all valuables within. The investigation did not receive any Property Clerk Invoice or vouchers associated with § 87(2)(b) vehicle. PO Lee stated that § 87(2)(b) personal belongings found inside his vehicle were not documented because the police did not need to detain any of his items. As the supervisor, and the officer who instructed PO Lee and PO Sheine to search § 87(2)(b) vehicle, it was SGT Toribio's responsibility to ensure that all of the items within the vehicle were accounted for. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR13).
- SGT Toribio has been a member of service for fifteen years and has been a subject in six CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories


- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York (BR14), claiming physical discomfort, emotional upset, shock, fear, and trauma of being unlawfully arrest, searched, handcuffed and subject to prosecution on a false charge. There is no 50H hearing scheduled.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 15

Investigator:	<u>Jeffrey Tsui</u>	<u>INV Jeffrey Tsui</u>	<u>05/23/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>05/24/23</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date